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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,769	12/29/2003	Hongbiao Li	5011-0002A	6486

7590

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Michael L. Diaz  
Michael L. Diaz, P.C.  
Suite 200  
555 Republic Drive  
Plano, TX 75074

EXAMINER

NGO, LIEN M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/747,769

Applicant(s)

LI, HONGBIAO

Examiner

LIEN TM NGO

Art Unit

3727

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 8-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of invention II and species I, claims 3-7, 13 and 14 in the reply filed on 5/3/05 is acknowledged. The traversal is on the ground(s) that invention I and II are capable of use together. This is found persuasive; therefore, the restriction of invention I have been withdrawn, and claims 1 and 2 have been included for the consideration of merit.

### ***Claim Objections***

2. Claim 6 is objected to because of the following informalities: in claim 6, "the closing means" should be – the vent closing means --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Haberman (6,116,457). Haberman discloses, in fig. 1 and col. 4, lines 7-14, a straw comprising closing means 8 having a plurality of expandable sections biased to an

expand position to prevent liquid form passing through the straw orifice and opening when a user inhales through the straw

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-6, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruiz (4,714,173) in view of Haberman.

Ruiz disclose a non-spillable container comprising a cover 10, a straw with a sealing means 40, 40', and a vent 22 with closing means 22.

Ruiz does not disclose the straw having a closing means.

Haberman teaches a straw having closing means,

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the straw in the invention of Ruiz with a closing means, as taught by Haberman, in order to control the liquid flowing under a suction.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruiz in view of Haberman and further in view of Panec et al. (6,135,311).

Ruiz in view of Haberman does not disclose the vent closing means including a diaphragm having a plurality of unattached points.

Panec teaches, in fig. 6, a vent closing means including a diaphragm having a plurality of unattached points.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vent closing means in the Ruiz with a diaphragm having a plurality of unattached points, as taught by Panec, in order to facilitate the venting of the container.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

June 23, 2005

